The Capitalist Manifesto. By Louis O. Kelso and Mortimer J. Adler. New York: Random House, 1958. Pp. xviii, 265. $3.75.

Mortimer Adler, former Professor of the Philosophy of Law at the University of Chicago, and student of the "great ideas," has joined with a San Francisco corporation lawyer, Louis O. Kelso, in authorship of a small but ambitious volume titled intriguingly—if somewhat deceptively—*The Capitalist Manifesto*. Though uneven, it is an interesting and provocative contribution to "utopian" economic thought. In some ways it recalls the work of another Chicagoan, economist Henry C. Simons,[1] who taught at the University of Chicago Law School until his death. Relating the authors' first venture into economics to Professor Simons' work is unfortunate in one sense. After all, Adler is an analyst of philosophic thought and Kelso a man of practical affairs. In economics, their technical proficiency and sophistication are inevitably far less than that of Simons. But the comparison also has its positive side. This is that, even though the authors start from so different an orientation, they yet arrive at an economic viewpoint and make policy recommendations tending in the same direction as those of Simons. This is certainly to their credit.

The basic observation upon which the book builds is not new, and has often been made under questionable auspices. It is that the traditional attributes of private ownership of property are becoming so greatly circumscribed that that institution may soon be impotent to perform its historical role as a source, or at least a guardian, of political freedom. From there, after a typological and historical survey of economic systems, the authors go on to analyze how and why the institution of private property is so radically changing, and to suggest constructive, rather than reactionary, steps which might be taken to rehabilitate it. Interestingly, their proposals for rehabilitation deal almost entirely with the corporate form of property ownership. Unlike earlier reformers who were preoccupied with land or the small shopkeeper, craftsman or business man, Kelso and Adler are concerned with policy regarding corporations and the securities portfolio.

The authors feel that the tendency toward the socialization of property has been caused by a historical concentration of ownership of capital in the hands of a few. Prior to the first World War, production was "laboristic"—labor contributed more to the national product than did capital. Yet the distribution of the product, in that it went largely to the property-owning class, was "capitalistic." Of course the authors do not trace in detail the evolution and gradual breakdown of what they call "primitive capitalism." Their concern is that its injustices were redressed not by positive measures to encourage the deconcentration of capital by broadening its ownership base, but largely by government intervention which diverted to labor (as wages) and to the general public (as

[1] The major writings of Professor Simons, except for his major work on taxation, are collected in Economic Policy for a Free Society (1948). See particularly chapter two, "A Positive Program for Laissez Faire: Some Proposals for a Liberal Economic Policy."

transfer payments) a large part of the product properly attributable to capital's productiveness. The diversion is manifested in high progressive income taxation, large governmental redistributive expenditures, and state encouragement of labor monopoly.

These measures undoubtedly alleviated the pressures which might otherwise, as Marx predicted, have destroyed enterprise capitalism completely. But the "mixed capitalism" which they characterize is not a sound or stable type of economic system. Among its defects are that it is inherently seriously inflationary. Another is that, as the economy becomes increasingly capitalistic, the greater transfer problems involved in distributing its output to non-capitalistic householders cause a tendency toward total state socialism. And this, hold the authors, is incompatible with individual responsibility and political freedom.

The problem is far advanced in most Western nations. In the United States capital accumulation has been so effective that today, according to the authors, its productivity accounts for 90 per cent of the national product. Yet the state has become so vigorous in its redistributive activities that the owners of capital receive only 30 per cent of that product. This "laboristic" distribution of the national product is as unjust as was the primitive capitalism of the 19th century and is a crushingly effective inhibitor of economic progress.

What is needed, the authors believe, is a radical but bloodless "capitalist revolution." The revolution must achieve a system characterized by two basic features: first, capital must be fairly evenly distributed among all households; second, capital must receive as its distributive share the full product attributable to it. As a result of the development of the modern corporation and its separation of the ownership and management of capital, these objectives are now said to be technologically possible for the first time.

The progress of industrial automation, according to Kelso and Adler, will inevitably result in a greatly diminished demand for labor of the "subsistence toil" variety, while capital requirements will grow at an increasing rate. Within the foreseeable future few households will need or, indeed, be able to rely on "subsistence toil" for their livelihood. Instead the national product will go to householders largely in their role as owners of small capital estates. No longer required to spend most of their time and energies in toil for the sake of subsistence, man's major efforts can be directed toward activities good in themselves—the liberal arts and professions, scholarship, statesmanship, invention, and the like. In this way man can achieve the perfection of his nature and fulfill the necessary conditions for maintaining political freedom. This, we are told, is the realizable utopia which the United States can demonstrate to the world, a definitive answer to the promises of communism.

This is utopian thinking on a grand scale and perhaps it is unfair to subject the work of the social philosopher to the dissection usually reserved for a work of legal scholarship. However, even in its own terms, there are some important defects in the analysis.

Perhaps the greatest disappointment is the authors' failure to explore the relationship between economic and political freedom. In the arsenal of ideas—and a "manifesto" must certainly meet rhetorical as well as substantive requirements—a persuasive demonstration that decentralized ownership of property and some degree of freedom of the market place are conditions of political liberty would be most useful. Such a demonstration could go far in offsetting a widely felt distrust of enterprise capitalism as the historical handmaiden of an outmoded colonialism. However, although this assumption is made, the difficult task of analysis and rhetoric is not undertaken. Mr. Adler's preface talks of enterprise capitalism as "the economic counterpart of political democracy" and "the economic substructure needed to support free political institutions" (p. x), but there the matter is dropped. One is left with nothing more than a possibly permissible inference that only a populace largely freed from dependence upon subsistence labor can perfect itself sufficiently to sustain free political institutions over a long period. This is a thought which can hardly serve as a libertarian clarion call to the capital poor areas of the world.

Rather, what the authors have sought to do is demonstrate that controlling ethical arguments support private ownership of capital. In terms both Aristotelian and, often, Marxian, they argue the injustice of an economic system which fails to distribute its product to the factors of production in proportion to the value which each has contributed. Thus they have tried to do explicitly what some economists, usually amidst vigorous disclaimers, while making "welfare" judgments have done implicitly, i.e., clothe the traditional free market model with moral vestments. It must certainly be said, however, that the authors' dedication is not to Mr. Herbert Spencer's *Social Statics;* their conception of the role of government is not that of "laissez faire" in a negative sense. Rather, government is charged with the responsibility for vigorous and affirmative action in the redistribution of large capital holdings and the encouragement of new capital formation. Still, it can be questioned whether at this moment in history arguments that ring of natural law add much to the persuasive force of a document meant to supplant its near namesake as a "call to action."

Although they have made some heroic mistakes in their excursions into economic theory, the authors deserve more praise than blame for this aspect of their work. It is rather unusual for social philosophers—or lawyers, for that matter—to bother to try to master even the fundamentals of economic analysis before making authoritative pronouncements on matters of economic policy. The authors, on the other hand, present a lucid summary of the role of price in the direction of resource use and in the allocation of distributive shares. But unfortunately, at critical points in their discussion, they appear to confuse average product with productivity at the margin. This largely vitiates their attempt to demonstrate theoretically that today owners of property receive only a small fraction of what a free market would register as the appropriate return

to capital.[2] The "proof" from observed facts is equally unpersuasive, for it consists of little more than a list of some of the basic labor-saving inventions before and since the industrial revolution and some rough data on industrial output per man-hour of labor during the last century. No economist will regard this as sufficient proof that the productivity of capital accounts for 90 per cent of the current national product.

Another aspect of the authors' confusion on this basic economic matter involves the way in which they have defined the factors of production in their model. For the purposes of the discussion of productivity, labor is defined as the purely mechanical human contribution. In this sense of the word, it may well be that the average product of "labor" is, indeed, exceedingly small. But from this one cannot conclude, as the authors do, that labor today is actually receiving a disproportionate share of the national income as distributive shares are measures for census purposes. The authors surprisingly fail to recognize that a large proportion of the capital of an advanced economy is invested in the technical skills and general level of education (adaptability) of its workers. Indeed, this capital factor inherent in all human labor, and particularly in a highly skilled and specialized work force, may be large enough to account for most of the difference between the authors' estimates of labor's productivity and those which are more generally accepted.[3]

These analytical deficiencies, however, serious as they are, do not necessarily destroy the validity of the book's thesis. It is not impossible that automation will eventually substitute for most "human capital" the work of machines. It is only that the utopia may be somewhat more distant of possible realization, even for the most advanced economies, than the authors seem to indicate. It may be impossible to prove that today the return to capital is lower than it would be in an economy *both* less imperfect in the operation of its markets *and* as progressive as its members would choose if capital were more equally distributed. But, even if this is so, the authors have another string on their fiddle, and a more resonant one. This is the desirability for its own sake of a more equalitarian distribution of ownership of capital. Insofar as there is agreement on this assumption—and there is apt to be a good deal, probably for reasons more "felt" than demonstrable[4]—the authors' proposals for reform will require consideration.

[2] See particularly the discussion at pp. 40–43.

[3] Compare the highly tentative conclusions regarding the marginal product of labor advanced by Millis and Montgomery after an exhaustive survey of available statistical data. But it seems clear that even in the (pre-World War I) years before high taxes, strong unionism and large governmental expenditures, wages and salaries accounted for roughly three-fourths of value added by manufacture. 1 Millis and Montgomery, The Economics of Labor 171–74 (1938). Thus the authors must bear the burden of showing that in a generation labor's productive contribution has decreased relatively to that of capital by some two-thirds.

[4] For example, Professors Blum and Kalven find unpersuasive the many "scientific" arguments advanced in the venerable "interpersonal comparison of utility" controversy that

Most of the proposals are not particularly novel. But several are breathtaking. To broaden the base of ownership of existing enterprises, the authors suggest tax encouragement of industrial "equity-sharing" plans (as opposed to cash profit-sharing); death and gift taxes based on the size of the recipient's capital holding rather than on the amount of the estate and gifts (no tax to be levied until the recipient household has achieved a "viable" capital accumulation); and estate and gift tax exemptions for transfers of securities to employees of closely held corporations, rather than charitable foundations. To encourage new investment, there is suggested the establishment of a system of investment preferences under which new investors and owners of small holdings would be given priority in subscribing to new flotations of "choice" equity securities; government encouragement of "installment plan" and other types of financing of investment in substantial blocks of equity securities by holders of sub-viable estates; and, most unusual of all, government insurance against fluctuations in the income derived from such holdings, a measure which would constitute the government's major anticyclical fiscal weapon. Increased dividend income to shareholders and more effective market direction of capital flow would be achieved by requiring "mature" corporations to distribute all earnings as dividends, repairing to the capital markets as new funds are required, and by eventual complete elimination of the corporate income tax. And finally, the authors suggest overhaul of the income tax structure and other laws, including labor legislation, to eliminate features which aggravate the concentration of ownership of capital and may encourage growth of business enterprises beyond their "optimum" size.

The foregoing summary of the authors' "practical program" is perhaps sketchy but not much more so than that which it attempts to outline. By way of apology, the reader is told that the "tentative presentation" of the program was added to the theoretical treatment at a later date, in response to requests for suggestions for action and to stimulate study and discussion.

Several of the proposals are, of course, old reliables which have been fairly thoroughly discussed in the economic literature. For example, the proposal to measure gift and estate taxes on a base related to the economic condition of the recipient was made by Simons in 1938[5]—though with the objective of more accurately measuring income (in conjunction with averaging), rather than in the present context. The elimination of the corporate income tax and proposals for forcing out all corporate earnings also have long been standard items for debate on the public finance agenda. The proposals which are novel, at least to the

greater equality in the distribution of a given national income necessarily produces a higher "welfare" level. Yet they feel that most people are in some agreement on the objective. Blum and Kalven, The Uneasy Case for Progressive Taxation, 19 U. of Chi. L. Rev. 417 (1953).

[5] Simons, Personal Income Taxation: The Definition of Income as a Problem of Fiscal Policy (1938).

writer, are those directed toward stimulating wider ownership of stock through investment preferences, installment buying of blocks of securities, and dividend income insurance. But none of these intriguing suggestions—each of which poses herculean problems in theory and of implementation, to say the least—can be expected to receive serious critical attention until set out with more precision and detail. It is to be hoped that Mr. Kelso, to whom Mr. Adler attributes main credit for the economic analysis and proposals, will find an opportunity to do so, perhaps in his announced "comprehensive treatise on the theory of capitalism" of which the present slim volume is presumably in part a preview.

The preview, all in all, is a disappointment in spite of the attractiveness of its fundamental position and objectives. Unfortunately, its main effect may be to keep serious students of economic matters away from the coming attraction. One hopes not, because amidst its epic failures and recurrent conceptual rigidity the present work demonstrates some degree of the brilliant audacity of approach and unprofessional originality of ideas which are essential elements of important utopian writing. If these qualities are in any substantial measure attributable to Mr. Kelso, he is quite an unusual breed of corporation lawyer, and one from whom we should look forward to hearing again. In its present form, however, his statement of ideas and proposals would impress most lawyers as more of a first draft than a polished instrument ready for execution by a client. Nonetheless, insofar as it calls attention again to some fundamentally important aspects of the liberal tradition which tend to be overlooked, the work is a much needed and salutary reminder that perhaps thinking men can still choose a positive program whose central concern is economic and political freedom.

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Traffic Victims: Tort Law and Insurance. By Leon Green. Evanston: Northwestern University Press, 1958. Pp. 127. $4.00.

There has been no teacher of torts in the last thirty years who does not owe a major debt to Leon Green for his energy, scholarship, imagination, and insight. And there are few law students whose education has not been significantly touched by his work. In brief we are all wiser because of him. The current volume, a publication of his 1958 Rosenthal lectures at Northwestern University, again places us in his debt. This is a significant book—it is significant because it records permanently and with vigor the final vote of so distinguished a student of tort law on the merits of that law as applied to the automobile accident. The vote is a clear and ringing "no." It is announced with the opening sentence of the book which tells us that the book will "seek to demonstrate the obsolescence and futility" of the current law and will advocate "comprehensive compulsory loss insurance as a substitute." It is impressive that after a lifetime